1947. **File No.** B City Pol/4

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Legal **DEPARTMENT**

B **BRANCH**

Subject:—

A Bill to amend city of Bombay Police Act, 1902—

P.T.O.

File No. B City Pol. /47.

Stl. Sectt. Slip 24 B e.

621-B

C O N T E N T S.

Legal Department File No. S. City Police /47

Sr. No.	Compilation No.	Subject	Pages.
1	To C.S.No.6392 Dt. 20th June1947	~~Shri~~ M.Kaz, Comments of H.L.A. Shri. P.M.Lad upon objections raised by the Police Commr. to the amdt. of sec.63 of City of Bom. Police Act, 1902.	1-4

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I wish to make the following comments upon the objections raised by the Commissioner of Police to the amendment of section 63 of th City of Bombay Police Act, 1902. The amendment in the corresponding section 162 of the Code of Criminal Procedure was made in the year 192 that is 24 years ago. During the last 24 years there has neither been any insistent demand from the public of Bombay for a similar amendment, nor have cases presumably come to the no notice of Courts of of Government where the provisions of section 63 have been abused by the Police or by Prosecutors to the prejudice of an accused person. It is, therefore a matte for consideration whether the section which has stood the test of criminal practice for about 45 years should be changed merely for the sake of uniformity of the law.

2. In that connection I wish to point out that section 162 of the Code of Criminal Procedure does not apply to other Presidency Towns of Calcutta and Madras; and the Police Acts applicable to those towns do not also contain any provision corresponding to section 63 of the City of Bombay Police Act. The use of statements recorded by the Police in the course of investigations in these two Presidency Towns would, therefore, be governed only by the Evidency Act; and corroboration of a witness by means of his previous statement whether reduced to writing or otherwise would be permissible as also the use of a non-incriminating statement made by an accused person for a statement made under section 27 of the Indian Evidence Act. The practice obtaining in the Presidency Towns of Madras and Calcutta may supply one more reason against the amendment of section 63. If necessary, this position

may be got verified by reference to the authorities in Calcutta and Madras.

3. The difficulties pointed out by the Commissioner of Police are very real indeed. Ordinarily, there is no reason to shut out statements of an incriminating nature (which are otherwise provided for by the Evidence Act) which an accused person may make to the Police; and it may be pointed out in this behalf that the English practice permits the use of such statements in evidence at the trial. The exclusion of all such statements by an accused person or by a witness excepting for the limited purpose, which section 162 of the Code of Criminal Procedure has in view, may be justified in the mofussil on the principal ground that the lower Police subordinates who generally record such statements in the first instance are not properly trained and may not be trusted to gurantee fairplay to the accused. The Police in Bombay must necessarily stand on a different footing. I presume that they are better trained and better equipped; and the Magistrates in whose Courts the statements are to be used can look after the interests of the accused more ~~fearlessly and independently~~ fearlessly and independently than the Magistrates in the mofussil were hitherto expected to do. On this ground a point of distinction may be made in favour of retaining section 63 in its present form.

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4. It has been the experience of Judges and Magistrates that section 162 in its present form of the Criminal Procedure Code is generally used for the purpose of impeding the smooth ~~working~~ working of criminal trial. Tiresom questions are asked with reference to Police statements regarding minute details of contradiction; and omissions are not infrequently magnified into important contra-

contradictions. The result has been that whereas the prosecution has been entirely deprived of the benefit of the statement mad to the Police the accused has been given the privilege not so much of defending his legitimate interests but of attempting to discredit witnesses with reference to minor discrepancies. It is a matter of police whether it is necessary to give such privilege to an accused in Bombay.

5. These are the only grounds which can be advanced in support of what the Commissioner of Police has stated. The grounds in favour of the amendment are wellknown and have received legislative recognition in the amendment min the year 1923 to section 162 of the Code of Criminal Procedure.

6. It is on a balance of these considerations that Government may decide whether it is necessary to bring section 63 of the City of Bombay Police Act in line with the amended section 162 of the Code of Criminal Procedure.

Id/- P.M.L.
19-6

S.A.G.

Id/-
19-6

R.L.A.

PSH. 10/5
SC